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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Communique Telecommunications, Inc.)	FCC 99-80
and InterContinental)	
Telephone Corporation)	DA 99-1988
Petition the Commission to)	
Reconsider its Memorandum)	
Opinion and Order)	

cc Doct No
99-290

COMMENTS.

The National Exchange Carrier Association, Inc. (NECA)¹ submits these Comments on the Federal Communications Commission's *Public Notice*² regarding Communique Telecommunications, Inc.'s and InterContinental Telephone Corporation's Petition for Reconsideration.³ Petitioners seek Commission review of an Order issued on August 9, 1999,⁴ which denied their Application for Review.⁵

¹ NECA is a not-for-profit, membership association, created under subpart G of the Commission's rules. See generally 47 C.F.R. § 69.601 *et seq.*

² Communique Telecommunications, Inc. and InterContinental Telephone Corporation Petition the Commission to Reconsider its Memorandum Opinion and Order, FCC 99-80, *Public Notice*, DA 99-1988 (rel. Sept. 27, 1999)(*Public Notice*).

³ Petition for Reconsideration of Communique Telecommunications, Inc. d/b/a Logically (Communique) and InterContinental Telephone Corp. (ITC) (together referred to as Petitioners) (Sept. 8, 1999)(Petition).

⁴ Communique Telecommunications, Inc. d/b/a/ Logically Application for Review of the Declaratory Ruling and Order Issued by the Common Carrier Bureau, InterContinental Telephone Corp. Petition for Declaratory Ruling on National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5 Governing Universal Service Fund and Lifeline Assistance Charges, *Memorandum Opinion and Order*, FCC 99-80 (Aug. 9, 1999)(*Order*). Since Communique filed its Application for Review late, and it was

The Petition must be dismissed. Section 1.106(b)(2) of the Commission's rules states that a petition for reconsideration of Commission action will be entertained only if the petitioner can show a change in circumstances or that new facts have arisen since the Commission issued its original decision.⁶ Petitioners here entirely fail to meet this requirement, and instead merely reargue points previously rejected both by the Bureau⁷ and the Commission. The Commission must accordingly dismiss the Petition as it "does not rely on . . . new facts or changed circumstances that a petitioner for reconsideration must present in seeking reconsideration of a Commission action."⁸

Even if the Commission were to entertain this repetitious petition, it should be summarily denied. In support of their claim that NECA's Lifeline Assistance and Universal Service Fund (LA/USF) tariff was not valid, Petitioners again argue that that the Act permits only common carriers to file tariffs, that NECA is not a common carrier, and that NECA's charges therefore are not valid. But this argument ignores the fact that

properly dismissed by the Commission, Communique has no standing to request review of the remainder of the Order. *See Order* at ¶ 1.

⁵ *See* Communique Application for Review (June 27, 1995), and ICTC Petition for Declaratory Ruling and Interim Relief (May 5, 1995)(together referred to as Application for Review).

⁶ 47 C.F.R. § 1.106(b)(2). *See* Educational Information Corporation For Modification of Noncommercial Educational Station WCPE(FM) Raleigh, North Carolina, 13 FCC Rcd 23746 at 23747 (1998) (*WCPE(FM)*) ("[T]he Commission will entertain a petition for reconsideration of an order denying an application for review only if the petition relies on new facts.")

⁷ *See* Communique Telecommunications, Inc. d/b/a Logically Petition for Declaratory Ruling Regarding the Effectiveness of Tariff Rates and Regulations Governing Lifeline Assistance and Universal Service Fund Charges During the Period April 1 through July 21, 1989, *Declaratory Ruling and Order*, 10 FCC Rcd 10399 (1995)(*Bureau Order*).

NECA acts only as an agent of the local exchange carriers (LECs) that participate in its tariff, and that all of these LECs are listed as "issuing carriers" in the tariff pursuant to section 61.54 of the Commission's rules.⁹ Thus, it is readily apparent from the face of the tariff that it is in fact "filed" by common carriers.¹⁰ The fact that NECA itself is not a common carrier does not in any way undermine the validity of the tariff that it files on behalf of the issuing carriers listed therein.

Conclusion

The Commission should act expeditiously to dismiss the Petition for Reconsideration, which has obviously been filed merely for purposes of delay. While this proceeding has been pending before the Commission, Petitioners have avoided payment of NECA's lawfully billed charges for over seven years.¹¹ The Petitioners' filing of this meritless petition is just another attempt to hinder NECA's collection efforts.¹² To

⁸ *WCPE(FM)*, *supra*, at 23748.

⁹ See 47 C.F.R. § 61.54. See also 47 C.F.R. § 61.3(r) (defining "issuing carrier" as "[a] carrier subject to the Act that publishes and files a tariff or tariffs with the Commission.")

¹⁰ NECA's Tariff F.C.C. No. 5 lists issuing carriers on Title Pages 2 – 68. See e.g., NECA Tariff F.C.C. No. 5, Transmittal No. 833, filed June 16, 1999.

¹¹ Under section 1.106(n) of the Commission's rules, the Commission must issue a special order excusing Petitioners "from complying with or obeying any decision, order, or requirement of the Commission." 47 C.F.R. § 1.106(n). No such order was issued in this matter, and therefore, the debt is due and owing.

¹² The LA/USF debts that are the basis of this matter are also the subject of complaint for nonpayment in the United States District Court for the District of New Jersey. The District Court case has been stayed pending the Commission's decision. See *National Exchange Carrier Association, Inc. v. Communique Telecommunications, Inc., d/b/a/ "LogiCall"*, (D.N.J. No. 95-5742), and *National Exchange Carrier Association v. Intercontinental Telephone Corporation*, (D.N.J. No. 96-49).

avoid further delay, the Commission should immediately dismiss the Petition for failure to comply with section 1.106(b)(2) of the Commission's rules.

Respectfully Submitted,

October 7, 1999

NATIONAL EXCHANGE
CARRIER ASSOCIATION, INC.

By: 

Richard A. Askoff

Regina McNeil

Its Attorneys

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(973) 884-8168

CERTIFICATE OF SERVICE

I hereby certify that copy of the Comments was served this 7th day of October 1999, by hand delivery or first class mail, to the persons listed below.

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Rocky Marcelle

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Communique Telecommunications, Inc.)	
d/b/a Logically)	
)	
and)	
)	
Intercontinental Telephone Corp.,)	Case No. 99-1380
)	
Petitioners)	
)	
v.)	
)	
Federal Communications Commission)	
and the United States of America)	
)	
)	

MOTION FOR LEAVE TO INTERVENE

The National Exchange Carrier Association, Inc. (NECA), pursuant to 28 U.S.C. § 2348 and Rule 15(d) of the Federal Rules of Appellate Procedure, respectfully moves for leave to intervene and participate in the above-captioned proceeding as a matter of right.

Petitioners seek review of a Federal Communications Commission (FCC) Memorandum Opinion and Order, *In the Matter of Communique Telecommunications, Inc. d/b/a Logically Application for Review of the Declaratory Ruling and Order Issued by the Common Carrier Bureau; InterContinental Telephone Corp. Petition for Declaratory Ruling on National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5 Governing Universal Service Fund and Lifeline Assistance Charges* (FCC 99-80) (released August 9, 1999). This Order found that NECA was merely acting as an agent

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October 12, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYHonorable Mark J. Langer, Clerk
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Room 5423
Washington, D.C. 20001Re: Communique Telecommunications, Inc. et al. v. F.C.C. et. al.
Case No. 99-1380

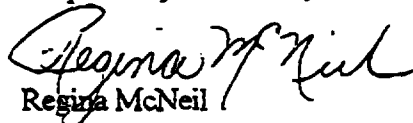
Dear Mr. Langer:

On behalf of the National Exchange Carrier Association, Inc. (NECA), I am submitting an original and four (4) copies of a Motion for Leave to Intervene to be filed with the court.

An additional copy of this letter and filing is also enclosed. Please date-stamp the extra copy and return to the undersigned.

Thank you for your assistance in this matter.

Respectfully submitted,


Regina McNeil

Enclosures

of its member local exchange carriers (LECs) when it filed its tariffs for universal service fund (USF) and lifeline assistance (LA) charges, which are at issue, and nothing in section 203 of the Communications Act of 1934, as amended, 47 U.S.C. § 203, prohibited carriers from using agents to file tariffs or bill and collect charges.

NECA is a not-for-profit membership association created under subpart G of the Federal Communications Commission's rules. *See generally* 47 C.F.R. § 69.601 *et seq.* NECA acts as an interstate access tariff agent on behalf of telephone companies that do not file separate tariffs; and for the collection and distribution of associated access charge revenues. NECA was a participant in the proceedings before the FCC. The interests of NECA and its membership will be directly affected by any action taken by this Court regarding the Memorandum Opinion and Order.

Wherefore, NECA requests that it be granted leave to intervene as a matter of right in this case.

Respectfully submitted,

October 12, 1999

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: 

Richard A. Askoff (D.C. Bar No. 42559)
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Communique Telecommunications, Inc.)	
d/b/a Logical)	
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and)	
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Intercontinental Telephone Corp.,)	Case No. 99-1380
)	
Petitioners)	
)	
v.)	
)	
Federal Communications Commission)	
and the United States of America)	

Rule 26.1 Disclosure of Interests

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the National Exchange Carrier Association, Inc. (NECA) respectfully submits this disclosure statement. NECA is a not-profit membership association created under subpart G of the Federal Communications Commission's rules. *See generally* 47 C.F.R. § 69.601 *et seq.* Its members include local exchange carriers, including telephone companies that do not file separate interstate tariffs.

NECA has no parent company, subsidiaries or affiliates for which disclosure is required by Rules 26.1.

Respectfully submitted,

October 12, 1999

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By. 

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CERTIFICATE OF SERVICE

I hereby certify that copy of the Motion For Leave To Intervene and Disclosure of Interests was served this 12th day of October 1999, by hand delivery or first class mail, to the persons listed below.

By: 
Rocky Marcelle

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